Filed 6/9/16 In re C.C. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re C.C. et al., Persons Coming Under the Juvenile Court Law.	
KINGS COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. JOSE C., Defendant and Appellant.	F072058 (Super. Ct. Nos. 15JD0136 and 15JD0137) **OPINION**

APPEAL from orders of the Superior Court of Kings County. Jennifer Lee Giuliani, Judge.

Gino de Solenni, under appointment by the Court of Appeal, for Defendant and Appellant.

Colleen Carlson, County Counsel, and Rise A. Donlon, Deputy County Counsel, for Plaintiff and Respondent.

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Jose C. (father) appeals from the jurisdiction/disposition hearing order where the juvenile court declared his children C.C. and J.C. dependents of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g)[1], and ordered they be removed from parental custody pursuant to section 361, subdivision (c)(1). Father argues the juvenile court erred when it found sufficient evidence to support the section 300, subdivision (g) allegation (unable to provide for care and supervision of his children due to his incarceration and cannot arrange for their care) and when it proceeded under an inapplicable statute, and that counsel was ineffective in misrepresenting and acquiescing in the use of the incorrect statute. He also contends the juvenile court erred when it denied him visitation, and that both the juvenile court and the Kings County Human Services Agency (agency) failed to comply with the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901, et seq.) because the agency failed to make adequate inquiry into the children's mother's claim of Indian heritage, resulting in defective notice to the tribes. We find no prejudicial error and affirm.

STATEMENT OF THE FACTS AND CASE

Detention

Father and Veronica N. (mother) are married and the parents of two children, C.C., born in 2011, and J.C., born in 2013. Father began a prison term for first degree burglary in December 2014. In March 2015, mother was arrested after a domestic violence incident with A.B., mother's brother-in-law, whom mother referred to as her boyfriend. The agency received a referral, but noted the children were not present during the incident. Mother reported she had been in a relationship with A.B. for a few months and was pregnant with his child. Mother physically assaulted A.B. after he told her he no longer wished to continue the relationship. The agency received another referral around

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

the same time alleging mother had been using methamphetamine and exhibiting bizarre behavior while caring for the children, who were reported to be dirty and possibly neglected. Mother's criminal history included various convictions, dating back over 10 years, many of them drug-related. Mother previously spent time in prison and participated in court-ordered substance abuse treatment.

Mother is an enrolled member of the Santa Rosa Rancheria Tachi Yokut Tribe (Tribe), and received over $3,000 a month per-capita funds from the Tribe. A home visit found mother's apartment sparsely furnished, lacking a refrigerator, and with a large hole in the front window. Mother stated she recently moved into the apartment and had not yet been able to furnish it. She admitted using methamphetamine five days earlier, but denied doing so in the presence of the children, claiming she left them with her sister when she got "high."

On March 27, 2015, mother agreed to voluntary services, but then failed to comply with requests to drug test or complete an alcohol and drug assessment. She later admitted using methamphetamine on several occasions in April 2015. On April 21, 2015, after a stabbing incident took place in front of mother's home, the agency sought, but was not granted, a protective warrant to temporarily remove the children from mother's care.

That same day, the agency filed a section 300 petition alleging the children were at substantial risk of harm due to mother's substance abuse issues (§ 300, subd. (b)).

At the time the detention report was prepared in May 2015, the agency located father at Wasco State Prison, but was unable to contact him directly. Notice of the detention hearing was faxed to the litigation officer at Wasco State Prison. The agency reported further inquiry would be made once father's location was verified in order to determine if he was, in fact, the father of C.C. and J.C.

At the detention hearing held May 6, 2015, father was not present; mother had been present, but left the courtroom prior to the case being heard and took the children with her. The juvenile court found the agency established a prima-facie showing the

children came within the jurisdiction of section 300, and ordered the children removed from mother's custody. The juvenile court found ICWA "may apply," and ordered mother to complete an ICWA-030 form. Father was found to be the alleged father of the children and appointed counsel.

After the children were located two days later, they were placed together into foster care.

A letter was received from father dated May 7, 2015, stating he wished to be involved and present in the proceedings.

Jurisdiction/Disposition on Allegations Against Mother

The report prepared in anticipation of jurisdiction/disposition stated mother and A.B. had been arrested May 11, 2015, and booked into Kings County Jail. Mother contacted the agency after her release from custody and was provided a referral for an alcohol and drug assessment, parenting class information, and directed to submit to a hair follicle drug test. On May 21, 2015, a tribal worker contacted the agency to state the Tribe had made arrangements for mother to enter an inpatient treatment program. But mother failed to enroll in the program and, less than a week later, was arrested for being under the influence of a controlled substance. During her arrest, mother stated she was five months pregnant.

The report recommended the children remain in foster care and that mother receive reunification services and visitation. The report indicated the agency sent father letters dated May 13, and May 19, 2015, together with a copy of the detention report, some parenting articles, and a blank statement regarding parentage form (JV-505) for father to complete.

The report attached letters from the Tribe indicating that neither child was an enrolled member of the Tribe and applications for membership on their behalf had not been filed. The agency contacted the Tribe to locate possible relatives for placement. The Tribe provided a telephone number for Elaine and Brennon J., whom father had

identified as a possible relative placement. While Elaine J. stated she was willing to have the children placed with her, she did not believe her background check would clear. Mother told the agency she had a stepmother in Corcoran who might be willing to have the children placed with her, but mother provided no contact information other than her first name. Father also told the agency Daisy B. might be a possible relative placement, but he had no contact information for her either.

Jurisdiction/Disposition Hearing for Mother

At jurisdiction/disposition on June 10, 2015, both mother and father were present. Father filed an ICWA-020 form indicating he may have Indian ancestry through a tribe in Mexico. Father requested he be declared the presumed father of the children, as he was married to mother at the time of the children's birth, provided support for them, and held them out at his own.

The juvenile court postponed making a determination about father's presumed status and set a contested hearing for July 22, 2015, to allow father's counsel to be present. Father stated he had sent in "motions for prisoner's rights to visits," but the juvenile court stated it had not received them, that "prisoner's rights" were traditionally handled in another department, and that it would not and had "never made an order that orders children to visit in a state prison institution."

Father, who stated he had a number of people he wished considered for placement of the children, was told by the juvenile court to have those people contact the agency "as soon as possible." Father claimed this was difficult for him given his incarceration. The agency stated it had already contacted some of these people, ruled some out, and assured the juvenile court the Tribe was also seeking relatives for placement and had contacted the people father named.

The agency sent notice of the proceedings and the ICWA-030 to the Tribe and Bureau of Indian Affairs on June 25, 2015. The notice stated mother was an enrolled

member of the Tribe, but did not contain any information about mother or father's birthplaces or any of their ancestors.

Amended Section 300 Petition to Include Allegation Against Father

The section 300 petition was amended July 20, 2015, to include an allegation that father was unable to provide for the care and supervision of the children as he was incarcerated (§ 300, subd. (g)).

Jurisdiction/Disposition on Allegation Against Mother and Father

An addendum report for the July 22, 2015, contested jurisdiction/disposition hearing reported the agency contacted the litigation officer at Corcoran State Prison, where father was now incarcerated, and was informed his expected release date was March 7, 2017. The agency maintained father's history of incarceration and his criminal history indicated he had not provided consistent care and supervision for the children, which prevented formation of a bond between them. The agency further alleged providing reunification services to father would be detrimental to the children, as he was unavailable to parent or bond with them and was only entitled to six months of services, due to their young age.

The report recommended mother receive reunification services while services to father be bypassed pursuant to section 361.5, subdivision (e)(1)[2], since he was expected to be incarcerated until 2017.

Father filed form JV-505 stating that he was the children's father, he married mother, he provided care for the children, his family visited the children several times a year, the children lived with him from their births until September 2014, and he had already established parentage of the children through a voluntary declaration of parentage.

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[2] Reunification services need not be provided if parent is incarcerated and there is clear and convincing evidence it would be detrimental to the child. (§ 361.5, subd. (e)(1).)

Jurisdiction/Disposition Hearing

A contested jurisdiction/disposition hearing was held on July 22, 2015, for both mother and father. Father's counsel explained he advised father that, in his opinion, father had no grounds to contest jurisdiction or disposition because the only allegation against father was that he was in custody and would be for longer than 12 months, "therefore, the Court or the Agency does not have to offer him services." Nevertheless, counsel explained father wished to contest the allegations. Father then testified his sentence for first degree burglary had a maximum release date of February 2017. Father testified he married mother in 2010 before C.C.'s birth in 2011. She was born while mother was in prison; father was present. C.C. was released to father's custody. He took her home and provided for her until mother's release. Father and mother lived with C.C., and later with J.C. after he was born in 2013, until father's arrest in September 2014. Father was made the presumed father, subject to confirmation by the agency who had not yet located birth certificates for the children.

When asked if there would be any other witnesses, father's counsel again stated he did not think father had any grounds for contesting jurisdiction or disposition, but that father had some names, but not addresses or telephone numbers, of family members he would like to see considered for placement. Father then gave the juvenile court the names of a sister who was a lieutenant at Avenal State Prison and her husband who worked at Selma Auto Mall; a sister who taught school in San Diego; a brother retired from the Navy; and another woman who lived in Louisiana.

Father was allowed to speak further and contested the information concerning his criminal history contained in the jurisdiction/disposition report dated June 10, 2015. He also wished to introduce letters proving he had a bond between himself and the children, but his counsel stated he had tried to explain to father "that really isn't relevant for today's purposes."

The juvenile court agreed with counsel, stating,

> "That's not relevant for today's purposes. [¶] … [¶] The only allegation with regard to you is that you are in custody, which it seems to be since you were transported here that that's a true allegation. But other than that, there's no other allegation with regard to why the Court should take jurisdiction over your children. Those all have to do with the allegations as to their mother.… [¶] With regard to disposition, the hearing we have for disposition is whether or not reunification services should be offered to parents. The law provides that in the event that a parent is in custody and will be in custody for longer than the 12-month period that the law allows for reunification that the Court can't order reunification – or is not allowed to order reunification."

The juvenile court found that notice had been given as required by ICWA; the allegations of the amended petition were true; the children came within the jurisdiction of section 300, subdivisions (b) and (g); and father was the presumed father "without prejudice, which basically means that if the Agency finds out that what you told me wasn't true, we'll talk about it again when you come back for the paternity hearing." As for disposition, the juvenile court found clear and convincing evidence that the children were at substantial risk of danger if left in parents' custody, and ordered they continue to be removed from mother and father's custody pursuant to section 361, subdivision (c). Mother was given reunification services; father's services were bypassed pursuant to section 361.5, subdivision (e)(1).

Father filed a notice of intent to file a writ petition on July 23, 2015.

DISCUSSION

I. IS THERE SUFFICIENT EVIDENCE TO SUPPORT THE FINDING THAT FATHER WAS UNABLE TO ARRANGE FOR THE CARE OF THE CHILDREN PURSUANT TO SECTION 300, SUBDIVISION (g)?

Section 300 provides in pertinent part that "A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] … [¶] (g) … the child's parent has been incarcerated … and cannot arrange for the care of the child …."

Father contends there was insufficient evidence to support a factual finding that he could not arrange for the children's care while incarcerated. Therefore, he contends, there was no basis for the juvenile court to take jurisdiction under subdivision (g) of section 300.[3]

On review, we determine whether substantial evidence supports the juvenile court's jurisdictional finding. (*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1728.) All conflicts must be resolved in favor of the respondent, and we must indulge in all reasonable inferences which support the finding. (*Ibid.*) In this case, we disagree with father and conclude there is substantial evidence to support the juvenile court's jurisdictional finding.

It is uncontested that, at the time of the jurisdiction hearing, father was incarcerated. But, as father points out, incarceration alone is not sufficient for jurisdiction. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.) The agency must also prove that father could not arrange for the children's care. (*Ibid.*) Father argues he had "the potential to make arrangements for the children's care during the period of his incarceration," and the agency failed to prove he could not do so. We disagree.

The evidence before the juvenile court was that when father, who had been incarcerated since September of 2014, received notice of the upcoming detention hearing in May of 2015, he requested that he be allowed to be present at the hearing, but did not ask where his children were or request custody. On May 26, 2015, the social worker contacted the Tribe about possible relative placements for the children. One such relative suggested by father had been contacted and, although willing to take placement of the children, believed her background would not clear. Father provided the name of another

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3 Father acknowledges he has no standing to appeal the jurisdiction findings or disposition orders made with respect to mother.

relative for possible placement, but did not provide any further information in order to locate her.

Father was present at the June 10, 2015, jurisdiction/disposition hearing on mother's section 300, subdivision (b) allegations. At the hearing, father stated he had a number of people he wished considered for placement of the children, including one of mother's family members. The juvenile court advised father to have those people contact the agency "as soon as possible." Father stated this was difficult for him given his incarceration, but he had a letter ready to send to the social worker. The agency stated it had already contacted some of the people father suggested, ruled out some, and assured the juvenile court the Tribe was also seeking relatives for placement and had contacted people father named. The juvenile court addressed both mother and father, stating:

> "So, I think you probably know if you have people that you want to be considered it's important that you give their information to the Agency right [away] but if the Agency starts calling and they can't get a hold of people, it's not their responsibility to go out and find them. So it's really important that whomever you would like to be considered for placement whether it's your relatives or his relatives, you encourage them to contact the social worker so they can start the process. Because the process can take a while …."

A month later, at the jurisdiction/disposition hearing July 22, 2015, father had names of several people he wished to have considered for placement of the children, but he still provided no addresses or telephone numbers for them, asking instead that the juvenile court appoint an investigator to try and locate them. When the juvenile court declined to do so, father provided the names of several people, along with some cursory employment information on some, but he was not able to provide telephone numbers or addresses for any of them.

Substantial evidence supports the juvenile court's finding that father could not arrange for the children's care at the time of jurisdiction, and there is sufficient evidence to support the section 300, subdivision (g) finding.

We also reject father's argument that he was denied effective assistance of counsel because counsel "misstat[ed] the requirements for jurisdiction under section 300, subdivision (g)." At the jurisdiction hearing, father's counsel stated his belief that section 300, subdivision (g) required only that father be in custody, "which he is."

To prevail on an ineffective assistance of counsel claim, father must show (1) his trial counsel's deficient performance and (2) prejudice as a result of that performance. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) Prejudice is established if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Id.* at p. 694.) We have addressed the merits of father's claim, above, and found no prejudice.

II. DID THE JUVENILE COURT ERR WHEN IT PROCEEDED UNDER SECTION 361, SUBDIVISION (c)(1) AND DENIED FATHER CUSTODY PURSUANT TO SECTION 361.5, RATHER THAN PURSUANT TO SECTION 361.2, SINCE FATHER WAS THE NONCUSTODIAL PARENT?

Father next contends the juvenile court erred when it ordered the children removed from parental custody of both mother and father under section 361, subdivision (c)[4], rather than making a detriment finding necessary to deny a noncustodial parent's (father's) request for placement under section 361.2. We find no prejudicial error.

When a juvenile court removes a child from a custodial parent, in this case mother, it must first make a determination concerning a possible noncustodial parent under section 361.2. That section provides, in pertinent part, that "[w]hen a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires

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[4] Section 361, subdivision (c)(1) provides that a juvenile court may not take a dependent child from the physical custody of his or her parents with whom the child resided at the time the petition was initiated, unless there is clear and convincing evidence of a substantial risk of harm to the child.

to assume custody of the child." (§ 361.2, subd. (a).) If there is and if that parent requests custody, "the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (*Ibid.*) Furthermore, a section 300, subdivision (g) allegation, when merely based on incarceration as it was here, should not deny a noncustodial parent custody when the parent is able to make arrangements for the child and placement with the parent is not otherwise detrimental to the child. (*In re John M.* (2013) 217 Cal.App.4th 410, 423.) Under section 361.2, subdivision (c), the juvenile court must make its findings "either in writing or on the record."

In comparison, when a juvenile court orders a child removed from parental custody under section 361, it must find clear and convincing evidence that, if the child were returned home, there is or would be "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor" and that there is no reasonable means to protect the child without removal. (§ 361, subd. (c)(1).)

It is the noncustodial parent's request for custody that triggers application of section 361.2, subdivision (a); where the noncustodial parent makes no such request, the statute is not applicable. (*In re V.F.* (2007) 157 Cal.App.4th 962, 971, superseded by statute as stated in *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 57-58.) Assuming, arguendo, father's mention of relative placement was a request for custody, we find harmless the juvenile court's failure to make the required detriment finding under section 361.2, because father has not met his burden of demonstrating prejudicial error. Father must demonstrate a reasonable probability that, in the absence of error, the lower court would have reached a decision more favorable to him. (See, e.g., *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 303 [failure to make detriment finding was harmless]; *In re Abram L.* (2013) 219 Cal.App.4th 452, 462 [finding prejudicial error because there was a reasonable probability of a different result in the absence of error].)

"By its terms, section 361 applies to a custodial parent, while placement with a noncustodial parent is to be assessed under section 361.2. [Citation.]" (*In re D'Anthony D., supra,* 230 Cal.App.4th at p. 303.) In this case, the juvenile court's error was in making findings under the incorrect statute. Rather than finding clear and convincing evidence that placement with father would be detrimental, it found clear and convincing evidence of a "substantial danger" to the children's "physical health, safety, protection or physical or emotional well-being of the children" under section 361, subdivision (c)(1), and ordered the children removed from parental custody.

In deciding whether there is a reasonable probability of the juvenile court reaching a result more favorable to father under section 361.2 than it did when it found clear and convincing evidence to support removal under section 361, subdivision (c), "we can neither ignore the similarity between these statutes' mandatory findings, nor disregard the evidence supporting the court's 'substantial danger' finding concerning placement with father." (*In re D'Anthony D., supra,* 230 Cal.App.4th at p. 303.)

Under section 361.2, the juvenile court may consider placing a child with the noncustodial parent if that parent seeks custody of the child, the parent is able to make appropriate arrangements for the child's care during the parent's incarceration, and placement with the parent is not otherwise detrimental to the child. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 368-369; *In re Isayah C.* (2004) 118 Cal.App.4th 684, 700.) The length of a parent's incarceration may be a factor in determining detriment under sections 361, subdivision (c) and 361.2, subdivision (a). (*In re Noe F., supra,* at p. 369; *In re S.D., supra*, 99 Cal.App.4th at p. 1077.)

Here, while father may have been a noncustodial parent, he was still ineligible for custody of the children because he was not able to arrange for care for the children and placement with him would be detrimental to them. As we have discussed in section I, above, father was unable to provide a plan for the care of the children. In addition, father's incarceration release date was not until March of 2017, 22 months after the

children were detained. We have no doubt that, had the juvenile court applied the correct standard, it would have found "that placement with [father] would be detrimental to the safety, protection, or physical or emotional well-being of the child[ren]." (§ 361.2, subd. (a).)

We further reject father's argument that he was denied effective assistance of counsel because counsel acquiesced to the juvenile court's use of the incorrect statutory standard. We have addressed the merits of father's claim, above, and found no prejudice. (*Strickland v. Washington, supra,* 466 U.S. at p. 694.)

III. DID THE JUVENILE COURT ERR WHEN IT DENIED FATHER VISITATION WITH THE CHILDREN?

Father next contends the juvenile court abused its discretion when it denied him visitation with his children because he was in prison. But a review of the record indicates father was not denied visitation.

Father's argument is based on an exchange during the June 10, 2015, jurisdiction/disposition hearing for mother. Towards the end of the hearing, father's counsel advised the juvenile court that father "put in some prisoner's request for or demand for visitation of the children." Father then mentioned he had sent "motions for prisoner's rights to visits" to the court two to three weeks earlier. The juvenile court stated no such request had been received and that, "[i]f [father was] asking for a prisoner's rights traditionally that's handled in the other departments. What I do is I make an order that says that the Agency has discretion as far as visitation goes. But I won't and I have never made an order that orders children to visit in a state prison institution."

This was not a denial of visitation, and in fact, the issue of visitation had already been addressed. At the initial hearing on May 6, 2015, the juvenile court ordered "[v]isitation between the parents and the children shall be supervised" "as arranged by the … Agency." At the hearing in question, June 10, 2015, the juvenile court ordered

that all previous orders "remain in full force and effect." At the July 22, 2015, jurisdiction/disposition hearing for father, visitation for father is not specifically addressed, although the juvenile court again stated "[a]ll previous orders not in conflict with today's orders remain in full force and effect."

IV. DID THE AGENCY FAIL TO PROVIDE ADEQUATE NOTICE TO THE TRIBE?

Finally, father contends the juvenile court and agency erred by failing to carry out its duty of inquiry to give meaningful notice to the Tribe as to whether the children had any Indian ancestry. Father acknowledges notice was sent to the Tribe, but asserts such notice was "insufficient to establish meaningful notice since they contained incorrect information about the mother's birthplace and lacked any meaningful information about the parents' ancestry."

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) The juvenile court and the agency have an affirmative duty to inquire at the outset of the proceedings whether a child who is subject to the proceedings is, or may be, and Indian child. (Cal. Rules of Court, rule 5.481(a).) "Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families [because it] ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) "Because '"failure to give proper notice of a dependency proceeding to a tribe with which the dependent child may be affiliated forecloses participation by the tribe, [ICWA] notice requirements are strictly construed."'" (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.)

Here, when mother was first contacted on March 27, 2015, she told the agency she was an enrolled member of the Tribe. This information was included in the detention

report for the hearing on May 6, 2015. At the May 6, 2015, detention hearing, the juvenile court found that the ICWA "may apply," and that mother was to meet with the social worker within two court days and provide all the information necessary for the agency to complete a notice of child custody proceedings for an Indian child (ICWA-030).

On May 21, 2015, the agency received a message from Angelica Nodal of Tachi Tribal Services stating mother was entering an inpatient treatment facility in Fresno. A few days later, the agency contacted Nodal in an attempt to locate relatives for placement.

On June 4, 2015, the agency left a message with the Tribe to verify whether mother was a member. On June 8, 2015, the agency followed up with a fax concerning the enrollment of mother and the children. That same day, the agency received letters from the Tribe stating the children were not enrolled members of the Tribe and neither had an application on file.

All of this information was provided to the juvenile court for mother's June 10, 2015, jurisdiction/disposition hearing and taken into evidence. It is true that notice sent to the tribes must contain enough identifying information to be meaningful. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 175.) Here, the form ICWA-030, completed June 25, 2015, did not contain much information other than mother and father's current addresses and birthdates, but did state mother was an enrolled member of the Tribe.

Notwithstanding its omissions, we agree with respondent that the error was harmless. Even if the missing information was included in the formal notice, there was extensive contact between the agency and the Tribe, enough for the Tribe to determine if the children were Indian children and indicate whether they wished to participate in the proceedings. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1530 [deficiencies in ICWA notice harmless when it could be said that, if proper notice had been given, the child would not have been found to be an Indian child and the ICWA would not have applied].)

DISPOSITION

The orders are affirmed.

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FRANSON, J.

WE CONCUR:

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LEVY, Acting P.J.

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DETJEN, J.